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**THIS DISPOSITION  
IS NOT CITABLE AS PRECEDENT  
OF THE T.T.A.B.**

Paper No. 17  
AD

**UNITED STATES PATENT AND TRADEMARK OFFICE**

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**Trademark Trial and Appeal Board**

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In re Central & South West Services, Inc.

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Serial No. 75/292,809

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David Judson of Hughes & Luce, L.L.P. for Central & South West Services, Inc.

Dominic J. Ferraiuolo, Trademark Examining Attorney, Law Office 102 (Thomas V. Shaw, Managing Attorney).

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Before Seeherman, Chapman and Drost, Administrative Trademark Judges.

Opinion by Drost, Administrative Trademark Judge:

On May 15, 1997, Central & South West Services, Inc. (applicant) filed this application (Serial No. 75/292,809) seeking registration of the mark OUTAGE ALERT (typed drawing) for goods and services ultimately identified as "electrical outage identification and notification device" in International Class 9 and "electrical outage maintenance services" in International Class 42. The application is

based on applicant's assertion of a bona fide intent to use the mark in commerce.

The Examining Attorney refused to register the mark on the ground that the mark when applied to the goods and services is merely descriptive. 15 U.S.C. § 1052(e)(1). After the refusal was made final, this appeal followed. Applicant and the Examining Attorney have filed briefs. An oral hearing was not requested.

The Examining Attorney has submitted two definitions to support his refusal to register. The first definition defines "outage" as "an interruption or failure in the supply of power, esp. electricity" and "the period during which power is lost." The other definition is for the word "alert," defined as "a warning or alarm of impending military attack, a storm, etc."; "to warn (troop, ships, etc.) to prepare for action"; "to warn of an impending raid, attack, storm, etc."; and "to advise or warn." The Examining Attorney argues that the goods are intended "to immediately provide such warnings, alarms, and advisement in the form of notification to the intended users and purchasers of these goods that an electrical outage is imminent or in the process of occurring." Examining Attorney's Br. at 2. Similarly, the Examining Attorney argues that the services will offer some type of warning or

notification. Examining Attorney's Br. at 5. The Examining Attorney concludes that "the merely descriptive meaning of the term 'outage' modifies and complements its usage in connection with the term 'alert' and that this meaning as a whole applies to the intended use of the identified goods." Examining Attorney's Br. at 3.

In its brief, applicant argues that the term OUTAGE ALERT is not merely descriptive of its goods and services. According to applicant, the terms "outage" and "alert" have many possible meanings and it requires mental gymnastics to determine that "the services covered by the mark were maintenance services relating to electrical outages or that the goods covered by the mark included identification and notification of electrical outages." Applicant's Appeal Br. at 3. Applicant, in its appeal brief, lists 21 registrations, and suggests that the Office views the term "alert" with another term to be registrable.<sup>1</sup>

After considering the arguments and the evidence, we conclude that the term OUTAGE ALERT is merely descriptive for applicant's electrical outage identification and

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<sup>1</sup> While the list of registrations is not in the proper form and it was not timely submitted, the Examining Attorney has not objected to this material and, in fact, discussed each registration listed by applicant. 37 CFR § 2.142(d). Therefore, we will consider this list of registrations in our decision.

notification devices and electrical outage maintenance services.

A mark is merely descriptive if it immediately describes the ingredients, qualities, or characteristics of the goods or if it conveys information regarding a function, purpose, or use of the goods. In re Abcor Development Corp., 588 F.2d 811, 200 USPQ 215, 217 (CCPA 1978). A term may be descriptive even if it only describes one of the qualities or properties of the goods. In re Gyulay, 820 F.2d 1216, 1217, 3 USPQ2d 1009, 1009 (Fed. Cir. 1987). We look at the mark in relation to the goods or services, and not in the abstract, when we consider whether the mark is descriptive. Abcor, 588 F.2d at 814, 200 USPQ at 218. Therefore, contrary to applicant's argument, whether a mark is descriptive is not determined by whether one can look at the mark in the abstract and guess what the goods or services are. Instead, descriptiveness is analyzed in relationship to the goods and services identified in the application. In this case, we look at applicant's electrical outage identification and notification devices and electrical outage maintenance services to see if the term OUTAGE ALERT would immediately convey to prospective purchasers a characteristic or feature of applicant's goods or services and/or if it

conveys information regarding a function, purpose, or use of the goods or services.

Applicant's goods and services are electrical outage identification and notification devices and electrical outage maintenance services. In effect, its goods are outage notification devices and outage maintenance services. Undoubtedly, viewed in the context of applicant's identified goods and services, the term "outage" is highly descriptive of those goods and services.

The term "alert" also describes applicant's goods and services. "Alert" means to advise or warn. Here, applicant's goods and services would warn or advise of an impending or actual electrical outage and the term "alert" describes a device or service that notifies the appropriate person of an electrical outage. The purpose of applicant's goods and services is to alert consumers. Potential purchasers will immediately understand that applicant's goods and services warn or advise of impending or actual electrical outages. Therefore, the term "alert" is also descriptive of these goods and services.

In determining whether a mark is descriptive, we must view the mark as a whole and not dissect the mark and find it descriptive based on its individual components. Also, the fact that the Examining Attorney did not produce

evidence showing use of the exact term does not mean that the term is not descriptive. See In re American Society of Clinical Pathologists, Inc., 442 F.2d 1404, 169 USPQ 800, 801 (CCPA 1973). The question is whether the mark as a whole is merely descriptive since we recognize that a combined term can have a non-descriptive meaning that the individual descriptive terms lack. See In re Colonial Stores, 394 F.2d 549, 157 USPQ 382 (CCPA 1968) (phrase SUGAR & SPICE from nursery rhyme not merely descriptive for bakery products).

When the terms "outage" and "alert" are combined and used with goods and services that provide notification of electrical outages, it is immediately clear that the term describes goods and services that alert people of electrical outages. There is nothing incongruous about the term "outage alert" when applied to applicant's goods and services. The terms when combined are consistent with their individual definitions. In effect, applicant's goods and services provide alerts about electrical outages.

Applicant's main argument is apparently that the Office has registered similar marks in the past. To support this argument, applicant has provided a list of registrations that it says support its argument. Like the Examining Attorney, we are not persuaded by these

registrations. First, "[e]ven if some prior registrations had some characteristics similar to Nett Designs' application, the PTO's allowance of such prior registrations does not bind the Board or this court." In re Nett Designs, 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001). Even if applicant were able to establish that the USPTO had registered marks that had similar characteristics to applicant's mark, it does not establish that applicant's descriptive mark is entitled to registration. Second, the registrations, as the Examining Attorney has explained, do not support applicant's implication that the Office does not find the term "alert" to be descriptive. Several registrations are either on the Supplemental Register or are registered under Section 2(f) of the Trademark Act. Both of these types of registrations are an admission that the mark is merely descriptive. Therefore, the registrations demonstrate that the Office evaluates, as it must, each mark based on the goods and services in that particular application<sup>2</sup>.

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<sup>2</sup> We are also aware of the case of Medic Alert Foundation International v. Nationwide Medi-Alert, Inc., 212 USPQ 393 (TTAB 1981) in which the Board found that the mark MEDIC-ALERT was no more than suggestive for registrant's bracelets, necklaces, and wallet cards and the services of maintaining files setting forth disabilities or other medical conditions. The registrant's goods and services in that case are obviously significantly different from applicant's goods and services that provide actual alerts in the event of electrical outages.

Here, when it is clear that applicant's goods and services would involve alerting or notifying people of electrical outages, the term is merely descriptive.

Decision: The refusal to register on the ground that the mark is merely descriptive of the involved goods and services is affirmed.